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In the Supreme Court of the United States

OCTOBER TERM, 1956

FIDELITY-PHILADELPHIA TRUST COMPANY AND ROBERT B. HAINES, III, EXECUTORS OF THE WILL OF MARY H. HAINES, DECEASED, PETITIONERS

v.

FRANCIS R. SMITH, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D. C.

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 1008

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The question presented is whether death payments under contracts between the decedent and life insurance companies in the circumstances described below should be included in the decedent's gross estate as transfers of property with respect to which she has retained for her life the enjoyment of the income, under Section 811 (c) (1) (B) of the Internal Revenue Code of 1939, as amended by Section 7 (a) of the Act of October 25, 1949, c. 720, 63 Stat. 891 (26 U. S. C. 1952 ed., Sec. 811). At the age of seventy-six the decedent purchased three single premium life insurance policies without being required to take a

medical examination, upon the condition that she would purchase an annuity contract in connection with each life insurance policy in such an amount that the aggregate of the life insurance and the annuity premiums in each instance would be equal to 11/10ths of the face amount of the life insurance policy. She purchased the annuity contracts in the prescribed amounts. During her lifetime she assigned the so-called life insurance policies to her children without consideration. The decedent received the "annuity payments" until her death, at which time the proceeds of the "life insurance policies" were paid to her children.

This case presents the same question that was involved in *Bohnen* v. *Harrison*, 199 F. 2d 492 (C. A. 7th), affirmed by an equal division of this Court, 345 U. S. 946, rehearing denied, 345 U. S. 978, and is in direct conflict with the decision in that case.[1] Although the case arose under the 1939 Internal Revenue Code, Section 2036 (a) of the 1954 Code reenacted the pertinent provision without substantial change so that the issue remains important. Accord-

[1] The subsequent decision of the Court of Appeals for the Seventh Circuit in *Greene* v. *United States*, 237 F. 2d 848, referred to by the court below as interpreting the pertinent section of the Code in a manner consistent with that followed by it, deals with facts different from those in the present case and does not purport to qualify in any way the court's earlier decision in the *Bohnen* case.

ingly, although the Government believes that the decision below is correct,[2] it does not oppose the issuance of a writ of certiorari in this case.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

JUNE 1957.

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[2] The following cases are in accord with the decision below. *Estate of Reynolds* v. *Commissioner*, 45 B. T. A. 44; *Burr* v. *Commissioner*, 156 F. 2d 871 (C. A. 2d), certiorari denied, 329 U. S. 785; *Conway* v. *Glenn*, 193 F. 2d 965 (C. A. 6th).

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